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1 2 3 4 5 6 7	KAMALA D. HARRIS Attorney General of California KAREN B. CHAPPELLE Supervising Deputy Attorney General WILLIAM D. GARDNER Deputy Attorney General State Bar No. 244817 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2579 Facsimile: (213) 897-2804 Attorneys for Complainant	FILED AUG 19 2011 Soard of Vocational Nursing and Psychlatric Technicians
8	BEFORE THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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11	In the Matter of the Accusation Against:	Case No. VN-2009-4174
12	REBECCA ANNE HERLIHY 885 W. Olive Street	
13	Colton, CA 92324	ACCUSATION
14	Vocational Nurse License No. VN 212063	
15	Respondent.	
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17	Complainant alleges:	
18	<u>PARTIES</u>	
19	1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely i	
20	her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric	
21	Technicians, Department of Consumer Affairs (Board).	
22	2. On or about November 23, 2004, the Board issued Vocational Nurse License	
23	No. VN 212063 to Rebecca Anne Herlihy (Respondent). The Vocational Nurse License will	
24	expire on March 31, 2012, unless renewed.	
25	<u>JURISDICTION</u>	
26	3. This Accusation is brought before the Board under the authority of the following	
27	laws. All section references are to the Business and Professions Code unless otherwise indicated	
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STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1, the Bureau may renew an expired license at any time within four (4) years after the expiration.
- 5. Section 2875 provides that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.
 - 6. Section 2878 states, in pertinent part:

"The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

. . . .

"(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

. . . .

"(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee. . . ."

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 2521 states, in pertinent part:

"For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. . . ."

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COST RECOVERY

8. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

- 9. Respondent is subject to disciplinary action under section and 2878, subdivision (f), in conjunction with California Code of Regulations, title 16, section 2521, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a licensed vocational nurse. The circumstances are as follows.
- a. On or about April 22, 2010, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Penal Code section 459 [first degree residential burglary] in the criminal proceeding entitled *The People of the State of California v. Rebecca Herlihy* (Super. Ct. San Bernardino County, 2010, No. FSB1001413). The Court sentenced Respondent to 250 days in jail and placed her on 36 months probation.
- b. The circumstances underlying the conviction are that on or about April 9, 2010, Respondent stole \$200.00 belonging to her sister's boyfriend from his bedroom dresser drawer while he was taking a shower.
- c. On or about April 16, 2010, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Penal Code section 484(a) [petty theft] in the criminal proceeding entitled *The People of the State of California v. Rebecca Anne Herlihy* (Super. Ct. San Bernardino County, 2010, No. MVI1000513). The Court sentenced Respondent to two (2) days in jail, placed her on 36 months probation, and ordered her to stay away from Wal-Mart on Bear Valley Road.
- d. The circumstances underlying the conviction are that on or about January 3, 2010, Respondent stole \$75.35 in merchandise from a Wal-Mart store.

SECOND CAUSE FOR DISCIPLINE 1 (Dishonest Acts) 2 3 10. Respondent is subject to disciplinary action under section 2878, subdivision (j), in that Respondent engaged in substantially related dishonest acts. Complainant refers to and by this 4 reference incorporates the allegations set forth above in paragraph 9, subparagraphs a - d, 5 inclusive, as though set forth fully. 6 THIRD CAUSE FOR DISCIPLINE 7 (Unprofessional Conduct) 8 Respondent is subject to disciplinary action under section 2878, subdivision (a), in 9 that Respondent has engaged on unprofessional conduct. Complainant refers to and by this 10 reference incorporates the allegations set forth above in paragraph 9, subparagraphs a - d, 11 inclusive, as though set forth fully. 12 **PRAYER** 13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 14 and that following the hearing, the Board issue a decision: 15 Revoking or suspending Vocational Nurse License No. VN 212063, issued to 1. 16 Rebecca Anne Herlihy; 17 2. Ordering Rebecca Anne Herlihy to pay the Board the reasonable costs of the 18 investigation and enforcement of this case, pursuant to section 125.3; and 19 3. Taking such other and further action as deemed necessary and proper. 20 21 22 August 19, 2011 DATED: 23 TERESA BELLO-JONES, J.D., M.S.N., R.N. **Executive Officer** 24 Board of Vocational Nursing and Psychiatric Technicians Department of Consumer Affairs 25 State of California Complainant 26

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